

Court of Appeals, State of Michigan

ORDER

People of MI v Antonio Rena Prophet

Docket No. 272644

LC No. 05-007237

Michael J. Talbot
Presiding Judge

Kirsten Frank Kelly

Karen M. Fort Hood
Judges

Pursuant to MCR 7.205(D)(2), the Court orders that the November 2, 2005, judgment of sentence entered by the Wayne County Circuit Court is VACATED. The trial court erred in assessing twenty-five points for Offense Variable 11 where it appears from the evidence at defendant's trial that the two penetrations underlying defendant's convictions occurred on different dates and no evidence suggested that the penetrations "resulted or sprang" from one another. *People v Johnson*, 474 Mich 96, 100; 712 NW2d 703 (2006). Because defendant's sentences were predicated upon an inaccurate calculation of the sentencing guidelines' range, the matter is REMANDED for resentencing. *Id.* at 103; *People v Francisco*, 474 Mich 82, 88-92; 711 NW2d 44 (2006).

In all other respects, the application to take a delayed appeal is DENIED for lack of merit in the grounds presented. The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 08 2007

Date

Sandra Schultz Mengel
Chief Clerk